IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Ansmann et al.
Appl. No.	:	09/931,670
Filed	:	08/16/01
Title	:	COSMETIC PREPARATIONS
Grp./A.U.	:	1616
Examiner	:	D. Jones
Docket No.	:	H 2674A PCT/US

CERTIFICATE OF FACSIMILE TRANSMISSION PER 37 C.F.R. § 1.8

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

March 19, 2003 — Date

Marlene Capreri — Signature of certifier

Marlene Capreri — Typed or printed name of certifier

Honorable Commissioner for Patents
Washington, DC 20231

PETITION FROM REQUIREMENT FOR RESTRICTION UNDER 37 CFR 1.144

Sir:

Applicant hereby petitions the Honorable Commissioner of Patents and Trademarks to review the Examiner's restriction requirement in the above-identified application for patent.

Applicant had received an Examiner's Restriction Requirement dated December 12, 2002 in the instant application. The Examiner had indicated that the claims were directed to the following groups of inventions: group (I) claims 11-14 and 18-22 drawn to a compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and a fatty

acid N-alkyl polyhydroxyalkyl emulsifier, classified in class 424, subclass 401; group (II) claims 11-13, 15 and 18-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and an alkyl ether sulfate emulsifier, classified in class 424, subclass 401; and group (III) claims 11-13 and 16-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer and a betaine emulsifier, classified in class 424, subclass 401.

The Examiner noted that inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects, citing MPEP sections 806.04 and 808.01.

In response thereto, pursuant to the criteria outlined above, Applicant had responded that the inventions of groups I-III were most definitely related, for the following reasons. First, they all possess the same mode of operation, i.e., they are all capable of being introduced/admixed into a cosmetic composition for the purpose of imparting a pearlescent appearance thereto. Second, they all perform the same function, i.e., impart a pearlescent appearance to a cosmetic composition. Finally, they all provide the same effect, i.e., pearlescence. Thus, Applicant had noted that by employing the precise criteria relied upon by the Examiner for determining whether inventions are unrelated, i.e., MPEP 806.04 and 808.01, it was clear that the inventions are **ALL**, in fact, related.

Moreover, the fact that each invention identified by the Examiner is classified in the **SAME CLASS AND SUBCLASS** further serves to support Applicant's contention that the inventions are, in fact, related.

The Examiner had also made the claimed invention subject to an election of species requirement stating that a specific dialkyl ether must be elected, along with a specific cationic polymer, along with a specific emulsifier. Applicant respectfully submits that the election of species requirement is similarly improper for the following reasons.

It is extremely well settled that in order for an Examiner to make an election of species requirement under 35 U.S.C. 121, the Examiner must show that said invention pertaining to each species is "independent and distinct". The Examiner, however, has

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failed to make such a showing or, for that matter, such an allegation. Applicant respectfully submits that unless and until the Examiner can show that some or all of the species presently claimed are independent and distinct, which Applicant submits the Examiner **CANNOT**, then the election of species requirement is deemed to be improper.

In view of the above, Applicant respectfully requests that the Commissioner withdraw the Examiner's restriction and election of species requirement on the grounds that the Examiner has failed to meet the burden of proof necessary for establishing that the inventions of groups I-III, and their attendant species, are unrelated.

Respectfully submitted,

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